IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Jagdish Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.700/2002)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 17-4-2002 in Sessions Case No.190/2001 (146/2001) passed by Sh. Gopesh Chandra Dixit, RHJS, Additional Sessions Judge (Fast Track) Jhunjhunu.

Date of Judgment: January 03, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mrs. Shashi Sharma, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Jagdish, the appellant herein, was placed on trial before Learned Additional Sessions Judge (Fast Track) Jhunjhunu, who vide judgment dated April 17, 2002 convicted and sentenced him as under:-

U/s.376(2)(g) IPC:

To suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for three months.

U/s.450 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.500/-, in default to further suffer rigorous imprisonment for three months.

U/s.363 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.500/-, in default to further suffer rigorous imprisonment for three months.

U/s.366 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.500/-, in default to further suffer rigorous imprisonment for three months.

The substantive sentences were ordered to run concurrently.

2. As per prosecution story informant Bhani submitted a written report (Ex.P-1) before Superintendent of Police Jhunhunu stating therein that in the night of May 16, 2001 her grand daughter aged 7 years was abducted and ravished by Jagdish (appellant). On that report a case was registered and investigation commenced. The girl was subjected to medical examination, necessary memos were drawn, statements of witnesses were recorded, the appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Jhunjhunu. Charges under sections 450, 363, 366 and 376 IPC were framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 12 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. The contention of learned counsel for the appellant is that because of enmity between the two families the appellant has been implicated falsely in the instant case. In fact the appellant was impotent and unable to perform sexual intercourse.

4. I find no merit in the argument of learned counsel. Smt.Vinod

(Pw.1) who in her deposition stated that when she awoke to attend call of nature she heard cries of a child. She and Banwari her brother-in-law (Pw.3) rushed to the spot and found Lata (fictitious name) weeping. She was naked and in the cluches of appellant, who was committing intercourse. The testimony of Smt.Vinod gets corroboration from the evidence of Banwari (Pw.3). Female child Lata deposed that appellant thrusted his organ into her vagina. Female child was medically examined by the Medical Board and Sex-Assault Report (Ex.P-7) was drawn. Injuries were found on vagina and hymen was found torn. In the opinion of the Board, possibility of sexual intercourse could not be ruled out.

5. Potency test of appellant was performed by Dr. Maniram (Pw.9) on May 19, 2001 and vide report Ex.P-11 he opined that the appellant was able to perform sexual intercourse.

6. Having closely scanned the material on record, I find that ocular evidence adduced by the prosecution gets corroboration from the medical evidence. The charges have been established against the appellant and the impugned judgment does not suffer from any infirmity and no interference is called for.

7. For these reasons, I do not find any merit in the instant appeal and the same stands accordingly dismissed.

(Shiv Kumar Sharma)J.

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